

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE TENNESSEE

REC'D TN
REGULATORY AUTH.

'99 FEB 22 AM 11 56

IN RE: Proceeding for the Purpose of Addressing Competitive Effects of
Contract Service Arrangements Filed by BellSouth Telecommunications, Inc. In Tennessee. OFFICE OF THE
EXECUTIVE SECRETARY

Docket No. 98-00559

MOTION TO COMPEL

Comes the Consumer Advocate Division of the Office of Attorney General for the State of Tennessee, pursuant to the Hearing Officer's oral order made at a pre-hearing conference on February 18, 1999, and files the following Motion to Compel discovery responses from BellSouth Telecommunications, Inc.

FIRST SET OF DISCOVERY REQUESTS

Item 5

The Consumer Advocate Division First Interrogatory, September 16, 1998 Item 5.

For each Contract Service Arrangement (CSA) that BellSouth has filed with the Tennessee Public Service Commission and/or the Tennessee Regulatory Authority since January 1, 1995 identify the BellSouth employee who negotiated the CSA and state whether BellSouth first contacted the customer or if the customer first contacted BellSouth requesting the CSA.

Consumer Advocate Division's Position: BellSouth declined to identify the employees that negotiated the CSA. The company explained that many customers provided service under CSAs are supported by BellSouth accounts teams, but did not identify any of the account team members. In other responses, however, the company referred to the account teams. For example in response to Item 8 the Consumer Advocate Division requested that BellSouth explain how it notified other customers that may be similarly situated to a customer receiving service under a CSA that such service was available. BellSouth responded in part:

In addition, account teams are assigned to larger accounts and are charged with establishing and maintaining a positive ongoing relationship, which may include offering the customer a CSA.

The identity of these employees is necessary for the purpose of taking depositions to determine what method was used to make such similarly situated customers aware of the discounts offered under the CSAs; how it is determined that one customer is eligible for service under a CSA while others are not; to determine when a customer is similarly situated to a customer being provided service under a CSA; and when a customer is not similarly situated, etc.

Item 14

The Consumer Advocate Division First Interrogatory, September 16, 1998 Item 14.

Identify by name and title all individual(s) who reviewed and analyzed BellSouth's billing records to determine those Tennessee customers that should be considered as candidates for service under a Contract Service Arrangement (CSA).

BellSouth objects and refused to identify such employees.

Consumer Advocate Division's Position: The identity of these employees is necessary for the purpose of taking depositions to determine what method was used by BellSouth to select those customers who would and those who would not be offered service under a Contract Service Arrangement and if such selections were and are being made for the purpose of deterring competition in the market place.

Item 18

The Consumer Advocate Division First Interrogatory, September 16, 1998 Item 18.

Does each Contract Service Arrangement (CSA) currently in effect in Tennessee constitute the entire agreement between the parties, including any BellSouth affiliate? If not, please state what other agreements exist between the parties, including BellSouth affiliates.

Consumer Advocate Division's Position: BellSouth did not object to this request. The Company's response was that the CSAs currently in effect were "Not necessarily" the

entire agreement between BellSouth and the parties. The Company did not state other agreements for each CSA as requested.

Requests For Admission and Production of Documents

The Consumer Advocate Division's First Request For Admission, September 16, 1998 Items 4 through 11. BellSouth responded:

BellSouth objects to this request as being overly broad and unduly burdensome in that the Hearing Officer expressly limited discovery by each party to thirty (30) discovery request, including subparts; this request by the CAD exceeds that limitation.

BellSouth has refused to answer any of the requests for admissions or respond to any of the requests for production of documents served by the Consumer Advocate Division on the grounds that the discovery requests exceed the permissible number.

Consumer Advocate Division' Position: Limits on discovery requests apply only to interrogatories, not requests for admission and requests for production of documents. See, e.g. Rules 22.04 (Interrogatories to Parties) and 22.05 (Requests for Admission) of the Davidson County Local Rules of Practice. Rule 22.04 of the Davidson County Local Rules explicitly limits the number of interrogatories to 30, but there is no limit put on the number of requests for admission or other discovery. Accordingly, the Authority should deny BellSouth's objections and order it to answer to requests for admission and requests for production of documents.

4. A. For **each** Contract Service Arrangement (CSA) that BellSouth has filed with the Tennessee Public Service Commission and/or the Tennessee Regulatory Authority since January 1, 1995 and **each** service provided under the CSA admit or deny that the service is available at BellSouth's tariffed rates in BellSouth's tariffs approved by the Tennessee Regulatory authority under which BellSouth provides service to other ratepayers. .
- B. For **each** Contract Service Arrangement (CSA) that BellSouth has filed with the Tennessee Public Service Commission and/or the Tennessee Regulatory Authority since January 1, 1995, and **each** service provided under the CSA admit or deny that the service is available under terms and conditions covered by BellSouth's tariffs approved by the Tennessee Regulatory Authority under which BellSouth provides service to other ratepayers.

- C. For **each** Contract Service Arrangement (CSA) that BellSouth has filed with the Tennessee Public Service Commission and/or the Tennessee Regulatory Authority since January 1, 1995, and **each** practice covered by the CSA, admit or deny that each practice provided in the CSA is provided in BellSouth's tariffs approved by the Tennessee Regulatory Authority under which BellSouth provides service to other ratepayers.
5. Please admit or deny for each Contract Service Arrangement (CSA) that BellSouth has filed with the Tennessee Public Service Commission and/or the Tennessee Regulatory Authority since January 1, 1995 that the termination charge provided in the CSA is not based on cost.
 6. Please admit or deny that BellSouth developed a corporate strategy of offering certain customers or customers within certain groups service under Contract Service Arrangements.
 7. Please admit or deny that BellSouth's strategy of offering Contract Service Arrangements (CSAs) originated outside the State of Tennessee.
 8. Please admit or deny that BellSouth's strategy for offering CSA's has appeared in communications to one or more of its employees.
 9. Please admit or deny that BellSouth employees reviewed the billing records of one or more of its customers who are served under a Contract Service Arrangements (CSAs) prior to approaching the customer about providing service under a CSA.
 10. Please admit or deny that BellSouth has one or more existing computer programs which it uses to identify the users of its various services by individual customers.
 11. Admit or deny that BellSouth Telecommunications, Inc. initiated a proactive strategy of identifying high volume customers and to negotiate CSAs in order to protect its revenue stream for future periods.

The Consumer Advocate Division's First Request for Production of Documents, September 16, 1998 Items 1 through 11. BellSouth responded:

BellSouth objects to this request as being overly broad and unduly burdensome in that the Hearing Officer expressly limited discovery by each party to thirty (30) discovery request, including subparts; this request by the CAD exceeds that limitation.

1. Produce for inspection and copying a copy of any and all analyses that show that the

difference in the cost of providing service to the customer served under a CSA and the cost of providing service to the class of customers provided the same service under tariff is equal to or greater than discount provided under the CSA.

2. For each Contract Service Arrangement (CSA) that BellSouth has filed with the Tennessee Public Service Commission and/or the Tennessee Regulatory Authority since January 1, 1995 produce for inspection and copying a copy of all studies, analysis, reports, correspondence, etc. prepared by or on behalf of BellSouth to determine that all similarly situated Tennessee customers have been made aware of or otherwise offered a comparable CSA.
3. For each Contract Service Arrangement (CSA) that BellSouth has filed with the Tennessee Public Service Commission and/or the Tennessee Regulatory Authority since January 1, 1995 produce for inspection and copying a copy of all correspondence, notices, advertisements, etc. from which customers who are or may be similarly situated to the customer being served under the CSA could reasonably be expected to learn of the rates, terms, and conditions of the CSA.
4. Produce for inspection and copying a copy of all BellSouth directives, memorandums, operating procedures, scripts used by sales representatives, marketing procedures, internal correspondence, etc. that address the offering of CSAs to BellSouth customers.
5. Produce for inspection and copying a copy of all reports, memoranda, internal correspondence, studies, analysis, etc. prepared by BellSouth Telecommunications, Inc., BellSouth Corp, or any consultant on behalf of either entity, that address the offering of CSAs as a means of retaining customers in a competitive environment, or otherwise protecting the stream of revenue from customers who may be offered service by competing carriers.
6. Produce for inspection and copying a copy of all reports, studies, analysis, directives, operating procedures, marketing procedures, etc. that identify the characteristics of a BellSouth customer that should be considered as a candidate for a CSA.
7. Produce for inspection and copying a copy of all reports, studies, analysis, memoranda, correspondence, directives, operating procedures, marketing procedures, etc. that identify the characteristics that should be considered when determining if a BellSouth customer is similarly situated to another customer that is being provided service under a CSA.
8. Produce for inspection and copying a copy of all directives, memoranda, internal correspondence, procedures, etc. that address how customers bills or other records will be

analyzed to identify those customers that should be considered for the provision of service under a Contract Service Arrangement.

9. Produce for inspection and copying a copy of all analyses of customers bills and other records that were made by BellSouth to identify those customers that should be considered as candidates for service under as CSA.
10. Produce for inspection and copying a copy of BellSouth's organization chart that identifies by name and title those individuals that are responsible for developing and conducting BellSouth's marketing operations.
11. Produce for inspection and copying a copy of any and all BellSouth Telecommunications, Inc.'s board minutes that refer to Contract Service Arrangements.

SECOND SET OF DISCOVERY REQUESTS

In particular, the Consumer Advocate Division is moving for full and complete answers to the following discovery requests made in its Second Discovery Requests: 4, 6, 8, 9, 10, 11, and 13. These discovery requests and responses will be set forth in full below, along with the Consumer Advocate Division's statement of why the information or documents should be produced.

Item 4

The Consumer Advocate Division's request in Item 8, of its September 16, 1998 Interrogatories, was for BellSouth to explain the procedure used to notify other similarly situated customers or customers that might believe that they may be similarly situated of the existence of the CSA and the applicable rates, terms, and conditions. In response BellSouth stated in part:

BellSouth does not have a formal procedure by which similarly situated customers are notified about the existence of a CSA.

. . . .

In addition, account teams are assigned to large accounts and are charged with establishing and maintaining a positive ongoing relationship, which may include offering the customer a CSA. Customers also will at times indicate to BellSouth that they have

received a competitive offer at lower prices or with terms and conditions which differ from those in BellSouth's tariffs.

For each CSA filed with the Tennessee Regulatory Authority since January 1, 1995, identify the criteria that were the basis for the account team's decision to offer a CSA. Provide a copy of the accounts teams analysis and supporting documentation of the application of the criteria.

BellSouth Response:

Please see BellSouth's response to AT&T's First Data Request No. 3. To the extent documents responsive to this request exist, they would be contained in the customer's files maintained by the BellSouth account team serving that customer. These customer files are maintained by BellSouth throughout BellSouth's nine-state region and are located in cities: (1) where the customer's corporate headquarters is located; or (2) where the customer has a location served by the account team. Responsive documents contained in files maintained by BellSouth in Tennessee are available for inspection at the office of BellSouth Telecommunications, 333 Commerce Street, Nashville, Tennessee, subject to the Protective Order entered by the Authority in this proceeding. Any responsive document contained in files maintained by BellSouth outside Tennessee are available for inspection at the specific account team location of BellSouth Business Systems Marketing Department-Contract and Field Support, 675 West Peachtree Street, Atlanta, Georgia, subject to the Protective Order.

CONSUMER ADVOCATE DIVISION'S POSITION: BellSouth has not produced the requested documents, but has attempted to put the outrageous burden on the Consumer Advocate Division of going to different locations in BellSouth's nine state region to run down the documents. This is clearly not an adequate response.

Item 6

Admit or deny that the rates charged for some individual service elements under CSAs presently in effect are below the long run incremental costs as computed in the cost studies used by BellSouth to support the CSA filings. If denied provide supporting documentation.

BellSouth Response:

BellSouth objects to this request on grounds that the information sought is not relevant to any issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. The issue to which this request is directed-whether or not the price of service provided under BellSouth's CSAs is above the incremental cost of providing such service-has been raised by the CAD in Docket 97-01105, and BellSouth has already provide the CAD extensive information in response to discover by the CAD in that docket. The Authority has not granted the CAD's request to consolidate these dockets, and the CAD should not be permitted to do so unilaterally under the guise of discovery.

CONSUMER ADVOCATE DIVISION'S POSITION: Contrary to BellSouth's assertion, the impact of BellSouth's CSAs on competition is a issue in this proceeding (Note the title of this proceeding: Proceeding for the Purpose of Addressing Competitive Effects of Contract Service Arrangements . . .). If BellSouth is providing service at less than incremental cost and recovering the deficiency from a monopoly customer, the CSA is anti-competitive. If the Consumer Advocate Division cannot obtain the requested information on incremental cost, it cannot effectively prove its contention that an offering for less than incremental cost is anticompetitive.

Item 8

Produce for inspection and copying a copy of all reports, memoranda, internal correspondence, studies, analysis, minutes of board meeting, instructions to account teams, etc. prepared by or for BellSouth Telecommunications, Inc., or BellSouth Corp., that address the offering of CSAs as a means of retaining customers in a competitive environment, or otherwise protecting the stream of revenue from customers who may be offered service by competing carriers.

BellSouth Response:

BellSouth objects to this request to the extent it seeks information concerning BellSouth's marketing strategy, which is not relevant to any issue in this proceeding nor reasonably likely to lead to discovery of admissible evidence. The purpose of this proceeding is to consider the competitive effects on CSAs entered into by BellSouth in Tennessee and, if BellSouth's motion to expand the scope of this proceeding is granted, "special contracts" between other telecommunications carriers and their customers in this state. The purpose is not to give BellSouth's competitors an opportunity to delve into trade secret and other confidential commercial information, the disclosure of which would be detrimental to BellSouth. *See Everco Industries, Inc. V. OEM Products Co.*, 362 F. Supp. 204, 206, (N.D. Ill. 1973)(rejecting open-ended discovery request for company's confidential documents, recognizing that in actions between business competitors such confidential documents should not disclosed without sufficient cause.)

Subject to this objection, and without waiving this objection, documents responsive to this request are available for inspection at the office of BellSouth Telecommunications, 333 Commerce Street, Nashville, Tennessee, subject to the Protective Order entered by the Authority in this proceeding.

CONSUMER ADVOCATE DIVISION'S POSITION: The information requested is relevant because it goes to the very heart of the question of whether BellSouth has a deliberate strategy to cut off any potential competition by use of CSA's. Thus, the objection that documents will not be produced because they relate to "marketing strategy" is completely without merit. If BellSouth has an anticompetitive "marketing strategy," what information could be more relevant in a case involving the possible anticompetitive use of CSA's?

The Consumer Advocate Division acknowledges that BellSouth has offered to make certain documents responsive to this request available, but only under the proviso that no "marketing strategy" documents will be produced. Thus, it is obvious that BellSouth is not making all relevant documents available.

Item 9

Produce for inspection and copying a copy of all reports, studies, analyses, directives, operating procedures, marketing procedures, instructions to account teams, etc., that identify the characteristics of a BellSouth customer that should be considered as a candidate for a CSA.

BellSouth Response:

BellSouth objects to this request to the extent it seeks information concerning BellSouth's marketing strategy, which is not relevant to any issue in this proceeding nor reasonably likely to lead to discovery of admissible evidence. The purpose of this proceeding is to consider the competitive effects on CSAs entered into by BellSouth in Tennessee and, if BellSouth's motion to expand the scope of this proceeding is granted, "special contracts" between other telecommunications carriers and their customers in this state. The purpose is not to give BellSouth's competitors an opportunity to delve into trade secret and other confidential commercial information, the disclosure of which would be detrimental to BellSouth. *See Everco Industries, Inc. V. OEM Products Co.*, 362 F. Supp. 204, 206, (N.D. Ill. 1973)(rejecting open-ended discovery request for company's confidential documents, recognizing that in actions between business competitors such confidential documents should not be disclosed without sufficient cause.)

Subject to this objection, and without waiving this objection, documents responsive to this

request are available for inspection at the office of BellSouth Telecommunications, 333 Commerce Street, Nashville, Tennessee, subject to the Protective Order entered by the Authority in this proceeding.

CONSUMER ADVOCATE DIVISION'S POSITION: Once again, BellSouth has interposed the "marketing strategy" objection: according to BellSouth, information concerning its marketing strategy is not relevant. But if BellSouth has an anticompetitive "marketing strategy," what information could be more relevant in a case involving the possible anticompetitive use of CSA's?

Request No. 9 seeks information about the characteristics of the customers targeted by BellSouth for CSAs. If BellSouth targeted certain customers as part of strategy to remove lucrative accounts from competition, that information is extremely relevant in a case on anticompetitive activity.

The Consumer Advocate Division acknowledges that BellSouth has offered to make certain documents responsive to this request available, but only under the proviso that no "marketing strategy" documents will be produced. Thus, it is obvious that BellSouth is not making all relevant documents available.

Item 10

Produce for inspection and copying a copy of all reports, studies, analysis, memoranda, correspondence, directives, operating proceedings, marketing procedures, instructions to account teams, etc. that identify the characteristics that should be considered when determining if a BellSouth customer is similarly situated to another customer that is being provided service under a CSA.

BellSouth Response:

BellSouth objects to this request to the extent it seeks information concerning BellSouth's marketing strategy, which is not relevant to any issue in this proceeding nor reasonably likely to lead to discovery of admissible evidence. The purpose of this proceeding is to consider the competitive effects on CSAs entered into by BellSouth in Tennessee and, if BellSouth's motion to expand the scope of this proceeding is granted, "special contracts" between other telecommunications carriers and their customers in this state. The purpose is not to give BellSouth's competitors an opportunity to delve into trade secret and other confidential commercial information, the disclosure of which would be detrimental to BellSouth. *See Everco Industries, Inc. V. OEM Products Co.*, 362 F. Supp. 204, 206, (N.D. Ill. 1973)(rejecting open-ended discovery request for company's confidential documents, recognizing that in actions between business competitors such confidential documents should not be disclosed without

sufficient cause.)

Subject to this objection, and without waiving this objection, documents responsive to this request are available for inspection at the office of BellSouth Telecommunications, 333 Commerce Street, Nashville, Tennessee, subject to the Protective Order entered by the Authority in this proceeding.

CONSUMER ADVOCATE DIVISION'S POSITION: The definition of "similarly situated" customers is at the heart of this case: it is the Consumer Advocate Division's position that if BellSouth makes an offer in a CSA to one customer, it must make the same offer to all "similarly situated" customers. Thus, information from BellSouth as to how it determines who is a "similarly situated" customer is relevant to this proceeding.

The Consumer Advocate Division acknowledges that BellSouth has offered to make certain documents responsive to this request available, but only under the proviso that no "trade secret" or "marketing strategy" documents will be produced. Thus, it is obvious that BellSouth is not making all relevant documents available.

Item 11

Produce for inspection and copying a copy of all analyses of customers bills and other records that were made by BellSouth to identify the Tennessee customers that should be considered candidates for service under as a CSA. Include supporting workpapers and a copy of all directives, memoranda, internal correspondence, procedures, instructions, etc. that address how such analyses or studies were to be performed.

BellSouth Response:

BellSouth objects to this request to the extent it seeks information concerning BellSouth's marketing strategy, which is not relevant to any issue in this proceeding nor reasonably likely to lead to discovery of admissible evidence. The purpose of this proceeding is to consider the competitive effects on CSAs entered into by BellSouth in Tennessee and, if BellSouth's motion to expand the scope of this proceeding is granted, "special contracts" between other telecommunications carriers and their customers in this state. The purpose is not to give BellSouth's competitors an opportunity to delve into trade secret and other confidential commercial information, the disclosure of which would be detrimental to BellSouth. *See Everco Industries, Inc. V. OEM Products Co.*, 362 F. Supp. 204, 206, (N.D. Ill. 1973)(rejecting open-ended discovery request for company's confidential documents, recognizing that in actions between business competitors such confidential documents should not be disclosed without sufficient cause.)

Subject to this objection, and without waiving this objection, documents responsive to this request are available for inspection at the office of BellSouth Telecommunications, 333 Commerce Street, Nashville, Tennessee, subject to the Protective Order entered by the Authority in this proceeding.

CONSUMER ADVOCATE DIVISION'S POSITION: This request is relevant because it seeks information about the process used by BellSouth to select customers for CSAs. Surely BellSouth does not contend that there is no process or method by which it determines who is a potential candidate for service under a CSA. And if there is a process, the Consumer Advocate Division is entitled to know whether that process targets candidates in a way that is intended to or could have an anticompetitive effect.

The Consumer Advocate Division acknowledges that BellSouth has offered to make certain documents responsive to this request available, but only under the proviso that no "trade secret" or "marketing strategy" documents will be produced. Thus, it is obvious that BellSouth is not making all relevant documents available.

Item 13

For each Contract Service Arrangement (CSA) that BellSouth has filed with the Tennessee Public Service Commission and/or the Tennessee Regulatory Authority since January 1, 1995, identify the date that the CSA was signed, and the central office through which local exchange service is being provided to the customer's primary location in Tennessee.

BellSouth Response:

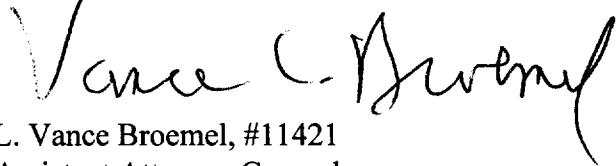
BellSouth objects to this request to the extent that it seeks the location of the central office through which local exchange service is being provided to the customer's primary location on grounds that the requested information is not relevant to any issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Furthermore, it would be unduly burdensome, if not impossible, for BellSouth to provide the requested information within a reasonable period of time. BellSouth does not know the customer's "primary location" because CSAs are not location-specific. BellSouth also does not keep records that identify the central offices that provide the specific service to which a particular CSA applies. Thus, to respond to this request, BellSouth would have to identify every billing number associated with each CSA, determine every line or number associated with those numbers. In addition, some services under particular CSAs are private line services which are not associated with a particular telephone line. For these services, BellSouth would be required to review each individual private line circuit associated with each CSA in order to determine the central office or office out of which each circuit is served. This manual effort would involve thousands of individual lines and circuits

served from BellSouth's approximately 200 central offices in Tennessee.

Subject to this objection, and without waiving this objection, documents responsive to this request are available for inspection at the office of BellSouth Telecommunications, 333 Commerce Street, Nashville, Tennessee, subject to the Protective Order entered by the Authority in this proceeding.

CONSUMER ADVOCATE POSITION: This request seeks relevant information. BellSouth contends that it will offer a customer a CSA when the customer has been offered a lower rate or when BellSouth has reason to believe that the customer has competitive alternatives that threaten BellSouth's ability to retain the customer's business. In order to know if a customer has a competitive alternative, BellSouth must know the customer location. Without knowing the customer location and serving central office, BellSouth would not know if an alternative carrier is available or have a reason to believe that the customer has an alternative. Accordingly, information about customer location is relevant to this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vance C. Broemel". The signature is fluid and cursive, with the first name "Vance" being more prominent.

L. Vance Broemel, #11421
Assistant Attorney General
Consumer Advocate Division
425 5th Ave. North
Nashville, TN 37243

CERTIFICATE OF SERVICE

I hereby certify that this document was served on parties of record by U.S. Mail or by facsimile this 22nd day of February 22, 1999.

Guy M. Hicks
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

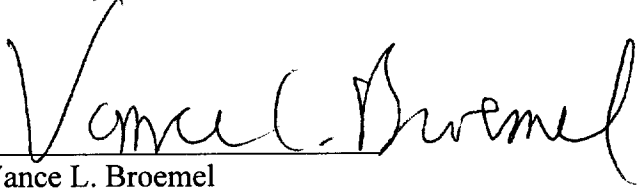
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